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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,039	11/04/2003	Peter Worthington Hamilton	5922R2CCC	6157

27752 7590 03/31/2006

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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CINCINNATI, OH 45224

EXAMINER

CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/701,039

Applicant(s)

HAMILTON ET AL.

Examiner

Victor S. Chang

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 20 March 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached NOTE.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

NOTE

1. Applicants' reply has been carefully reconsidered, but does not place the application in condition for allowance for the following reasons:

With respect to Applicants' argument "... The cited reference provides no teaching or suggestion relating to the proportion of the adhesive portion of the sheet that should be present in the form of protrusions ..." (Remarks, page 5, bottom paragraph), the Examiner repeats (see Office action mailed 12/21/2005, pages 4-5, bridging paragraph) that that since Wilbur teaches the same subject matter (a flexible wrapper sheet material) and for the same use (wrapping and enveloping), in the absence of evidence to the contrary, it is the Examiner's position that, in the absence of evidence to the contrary, a suitable surface coverage of the outstanding tubular burrs are either anticipated, or obviously provided by practicing the invention of prior art. It should be noted that where the claimed and prior art products are shown to be identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. See MPEP § 2112.01.

With respect to Applicants' argument "... there is no explicit teaching of the claimed structure, that the reference teaches away from the claimed structure and that a supposition that the structures are identical cannot serve as the basis for finding them so. The reference is silent as to the mode of producing the materials ..." (Remarks, page 6, first full paragraph), the Examiner notes: 1) Applicants fail to point out any

features of the instant invention in claim 1 being taught away by the reference. 2)

Applicants are reminded that in the absence of factual support, attorney's argument cannot take place of evidence. In particular, Applicants fail to provide any evidence that Wilbur must necessarily provide an adhesive coverage outside the claimed range of instant invention. 3) While the prior art Wilbur is silent about the amount of adhesive proportion, since Wilbur does teach *substantially* the same subject matter (a flexible wrapper sheet material), for the same use (wrapping and enveloping), the Examiner repeats that, in the absence of evidence to the contrary, a suitable surface coverage of the outstanding tubular burrs or adhesive area are either anticipated, or obviously provided by practicing the invention of prior art. 4) Regarding the mode of producing, the examiner reminds Applicants that the process steps are absent from any of the claims of the instant invention. Applicants' argument appears to be misplaced.

With respect to Applicants' argument "... None of the described and illustrated embodiments of the reference necessarily possess protrusions occupying between 30 and 70 percent by area of the sheet" (Remarks, page 7, top paragraph), Applicants are reminded that independent claim 1 is rejection under 35 USC 102(b)/103(a) over Wilbur, while Wilbur is silent about the adhesive coverage, Applicants nonetheless still fail to provide any evidence the Wilbur's invention must necessarily provide an adhesive coverage outside the claimed range of instant invention, as set forth above.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Victor S Chang
Examiner
Art Unit 1771

3/28/2006